

REMARKS

The above identified patent application has been amended and reconsideration and reexamination are hereby requested.

Applicants have enclosed a copy of an International Search report dated December 21, 2000 in a corresponding international application. The references cited on the report are not enclosed since all of the references are already of record in the application.

The Examiner objected to the drawings. Applicants will submit substitute drawings upon an indication of allowable subject matter.

The Examiner and rejected claim 5 under 35 U.S.C. 112 second paragraph, as being indefinite. Applicants have amended claim 5 to include --occur-- to correct the grammatical error and make the claim readable.

The Examiner rejected claims 1 – 4 and 6 – 25 under 35 U.S.C. 102(e), as being anticipated by Ferstenberg et al.

Applicants have amended claim 1 to recite receiving orders from customers. As amended applicants claim 1 is patentably distinct over Ferstenberg. Claim 1 is directed to a method of determining an opening price for a product at an initial opening of trading in the trading system. Claim 1 recites posting an allocation message to market maker participants to communicate an expected allocation of the imbalance for execution at an initial opening of a market in event that an imbalance exists at the opening. This action of posting an allocation message is neither described the suggested by the reference.

Ferstenberg is directed to an intermediated exchange where participants act through e-agents. The examiner bases the rejection of claim 1 in part on column 18 lines 30 through 54 of Ferstenberg. However, in this portion of the reference, as well as the remainder of the reference, Ferstenberg does not suggest posting an allocation message, as claimed. The cited text describes an allocation amongst e-agents of the intermediary's initial offer. The allocation however is not an allocation for an expected imbalance for execution at initial opening of the market. Rather the allocation is simply a pro rata sharing of the amount of a commodity that the e-agents collectively may wish to buy or sell. Furthermore, this allocation is not directed to market makers as recited in applicants claim 1, but is directed to the e-agents themselves. Thus, there is

no concept in Ferstenberg of a market maker or other similarly situated entity that is expected to satisfy any imbalance existing from customer orders at the opening of the trading. This results because Ferstenberg's model uses an intermediary to interact with e-agents that are software agents for market participants. Ferstenberg does not describe an entity that corresponds to the market maker absorb a share allocation. Accordingly, claim 1 is patentably distinct over the reference.

Claims 2 through 10 add further patentably distinct features to applicants' claim 1.

For example, claim 3 recites disseminating a message that indicates a current imbalance between buy and sell orders for the product. Ferstenberg does not suggest a message that indicates the extent of an imbalance. The Examiner relies upon column 8, line 67 through column 9 line 14 to support Ferstenberg's teaching of a message that indicates an extent of an imbalance. However, the message described in this portion of the reference is a response message to an opening query that is provided from the e-agents. The message indicates the maximum amount of a product that the e-agent is willing to accept. This message does not suggest a message that sets out the extent of imbalance in the market.

Applicants claim 6 is likewise patentably distinct over the reference since the reference neither describes nor suggests establishing a lock in period that requires market makers to specify whether they accept the last anticipated share allocation received by them in order that their allocation will not be further reduced. The examiner relies upon column 14 line 44 for support for locking. However in this portion of the reference has no such teaching. It merely relates to exchange of messages by participants over intervals of time, which correspond to sessions of trading. There's no teaching in the reference of establishing a locking period that enables market makers to specify acceptance of the last anticipated share allocation in order that an allocation will not be further reduced.

Applicants claim 7 is further patentably distinct over the reference since the reference neither describes nor suggests applying received predefined relative indications to an imbalance that exists subsequent to establishing a lock-in period. The Examiner points to excerpts from portions of the reference to establish teachings for predefined relative indications. However, the teachings of this reference do not describe the concept of a predefined relative indication, as recited by applicants. As set forth in the specification a predefined relative indication

corresponds to" a willingness or an expression to trade that resides in the system and remains dormant and unknown by other participants." No such teaching of predefined relative indications is found in the reference. Thus, the reference does not describe or suggest applying predefined relative indications to an imbalance that exists subsequent to establishing a lock-in period. Thus, claim 7 is further patentably distinct over the reference.

Applicant's remaining claims add further patentable distinct features. For example, claim 8 recites allocating the remaining imbalance amongst market makers after applying predefined relative indications to eliminate the imbalance. Claim 9 recites that the opening price is based on allocated imbalance amongst the market participants and applied predefined relative indications.

Claim 11 recites ... instructions for causing a computer to receive orders for a product, ... determine an imbalance condition between received buy orders and received sell orders and post an allocation message to market maker participants to communicate an expected allocation of an imbalance for execution at an initial opening of the market in the event that the imbalance exists at the opening. Ferstenberg does not suggest posting an allocation message, as claimed. There is no concept in Ferstenberg of a market maker or other similarly situated entity to satisfy any imbalance existing from customer orders at the opening of the trading. This results because Ferstenberg's model uses an intermediary to interact with e-agents that are software agents for market participants. Ferstenberg does not describe an entity that corresponds to the market maker nor describes a message that communicates a share allocation.

Claims 12-20 are patentable distinct at least for the reasons discussed in claim 11. Further, the claims add additional features. For example, claim 13 recites instructions to disseminate a message that indicates a current imbalance between buy and sell orders for the product. No such message is suggested in the reference. Claim 15 adds the limitations that the instructions to ... post an allocation message, ... and disseminate an imbalance message, occur over regular periods of time between the initial reception of orders and actual opening of the auction.

Claim 16, which recites instructions to establish a lock-in period that requires market makers to specify whether they accept the last anticipated share allocation in order that their allocation will not be further reduced is not suggested by the reference.

Claims 17 and 18 recite instructions to apply different classes of orders at specified times to reduce the imbalance. These instructions, e.g., apply received predefined relative indications to any imbalance that may exist subsequent to establishing the lock-in period (claim 17) or accept limit orders and allocate the remaining imbalance amongst market makers after applying predefined relative indications and marketable limit orders to eliminate the imbalance (claim 18) are not suggested by the reference.

Claim 19, which recites instructions ...to determine an opening price based on first free and open quote and whether there is still an imbalance and claim 20, which recites instructions to execute the entire amount of accumulated shares as a single block at one price are not suggested by the reference.

Claims 21-25 are not suggested by the references for at least the reasons discussed above. In addition, the reference does not suggest a system for determining an opening price for products traded over a distributed, networked computer system. The reference does not suggest ... a server computer ... executing a server process that determines an opening price for the product ... comprising instructions that cause the server to ... determine an imbalance condition between received buy orders and received sell orders and post an allocation message to market maker participants to communicate an expected allocation of the imbalance for execution at an initial opening of the market

Claims 22-25 add patentably distinct limitations as generally discussed above.

Applicant notes that the examiner did not reject claim 5 over the art. Claim 5 was only rejected as indefinite.

Applicant submits that as amended claim 5 is patentable over the art since the reference neither describes nor suggests ... disseminating a message that indicates a current imbalance between buy and sell orders for the product. Also, the reference does not suggest that determining an imbalance condition, posting an allocation message, ... and disseminating an imbalance message ... occur between the initial reception of orders and actual opening of the trading system.

Applicant has added new claims 26-31 that recite unique features of the invention. These features are not shown in the reference. For example, claim 26 recites that disseminating a message that indicates a current imbalance between buy and sell orders for the product is a

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publicly disseminated message and claim 27 recites that the message is disseminated to the general public and market participants. Similar reasons make claims 28-31 patentable.

Applicant has also reviewed the art cited but not applied by the examiner. It is submitted that this art whether taken separately or in combination with the art applied or of record, neither describes nor suggests applicant's invention.

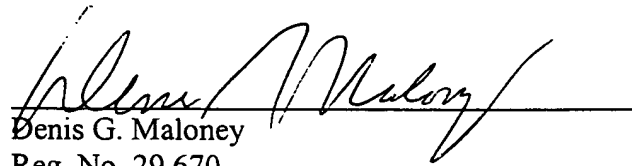
Accordingly, the claims as amended distinguish over the art and the case should be passed to issue.

Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: _____

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